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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/063,125	03/22/2002	Lex P. Jansen	10527-606001	5949
26161 7590 10/16/2008 FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022				
EXAMINER				
SEIVERTSON, RYAN J				
ART UNIT		PAPER NUMBER		
3731				
NOTIFICATION DATE		DELIVERY MODE		
10/16/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary

Application No.

10/063,125

Applicant(s)

JANSEN ET AL.

Examiner

Ryan Severson

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 6-8, 26-28 and 32-38 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1, 3, 6-8, 26-28 and 32-38 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 22 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1, 3, 6-8, and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gianturco (4,800,882) in view of Mayer (5,630,840).** Gianturco discloses a stent made from a wire that has a generally tubular shape (see figure 1). The stent can be made of many different metals, including tungsten (see column 3, lines 62-67). However, Gianturco does not disclose the stent is made of an alloy comprising tungsten and rhenium. Attention is drawn to Mayer reference, which teaches a wire stent of a tungsten based alloy having about 25 percent rhenium and the remainder (75%) tungsten (see column 11, lines 55-58) to provide a stent with sufficient flexibility and radiopacity. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the stent of Gianturco of a tungsten based alloy including rhenium instead of just tungsten, as taught by Mayer reference, to provide a stent with sufficient flexibility and radiopacity.

3. **Claims 26-28 and 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gianturco (4,800,882) in view of Mayer (5,630,840) and Campbell (5,632,840).** The combination of Gianturco and Mayer references does not disclose a drug-polymer coating on the stent. Attention is drawn to Campbell reference, which teaches the use of a drug-polymer coating on stents to allow the stent to deliver drugs to a treatment site. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a drug-polymer coating on the stent of the combination of Gianturco and Mayer references, as taught by Campbell reference, to allow the stent to deliver drugs to a treatment site.

Response to Arguments

4. Applicant's arguments filed 21 July 2008 have been fully considered but they are not persuasive.

5. Applicant argues the rejection set forth in the combination of Gianturco and Mayer ignores the structural differences between the two. However, Examiner points out that at no point was the structure of Mayer relied upon in the rejection. Mayer is merely used to show the tungsten-rhenium alloy is a known material in the stent art. Further, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

6. In the alternative, even if the structures of Mayer (i.e. the tungsten-rhenium core and casing) were relied upon, the claims do not prevent this combination of prior art. For example, the claims only require the stent *comprising* a body (the core of Mayer) consisting essentially of an alloy of tungsten and rhenium. Examiner notes that the stent could further *comprise* a casing surrounding the body.
7. Therefore, the arguments are deemed not persuasive and the rejections are maintained.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
9. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Severson whose telephone number is (571)272-3142. The examiner can normally be reached on Monday - Friday 8:30-5:00.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

12. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. S./
Examiner, Art Unit 3731

/Todd E Manahan/
Supervisory Patent Examiner, Art Unit 3731